IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.677 OF 2007

IN

APPEAL (L) NO.1063 OF 2006

IN

COMPANY PETITION NO.416 OF 1997

...

Goyal M.G.Gases Ltd. ...Appellant

v/s.

D.C.M.Daewoo Motors Pvt.Ltd.

and ors. ...Respondents

...

Mr.S.C.Gupte with Ms.Deepa Mani i/b S.K.Srivastava & Co. for the Appellant.

Mr.Kedar Dighe for Official Liquidator.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 25TH JULY, 2007

P.C.:

Heard the learned Counsel for the Appellant and the learned Counsel appearing for the Official Liquidator. For the reasons disclosed in the affidavit filed in support of the motion, motion is granted in terms of prayer clause (a).

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL (L) NO.1063 OF 2006

IN

COMPANY APPLICATION NO.10 OF 2006

IN

COMPANY PETITION NO.416 OF 1997

...

Goyal M.G.Gases Ltd. ...Appellant

v/s.

D.C.M.Daewoo Motors Pvt.Ltd.
and ors. ...Respondents

...

Mr.S.C.Gupte with Ms.Deepa Mani i/b S.K.Srivastava & Co. for the Appellant.

Mr.Kedar Dighe for Official Liquidator.

...

CORAM: D.K.DESHMUKH &
J.H.BHATIA, JJ.
DATED: 25TH JULY, 2007

P.C.:

1. This Appeal is directed against the order dated 10th August, 2006 passed in Company Application No.10 of 2006. It is common ground before us that application was made by the present Appellant pursuant to the liberty granted by the Division Bench by order dated 1st March, 2004 passed in Appeal No.135 of 2004.

2. The grievance of the learned Counsel appearing for the Appellant is that the Division Bench had granted liberty to the present appellant to make an application before the learned Company Judge for redressal of the grievance. That application was made, but perusal of the order of the learned single Judge shows that the learned single Judge has not

considered the grievance of the Appellant on merits anywhere in the order.

3. The learned Counsel appearing for the Official Liquidator is not in a position to point out from the order that the grievance of the Appellant which is referred to in the order of the Appellant court dated 1st March, 2004 has been considered by the learned Company Judge anywhere in the order. The learned Counsel appearing for the Official Liquidator, therefore, requests that the company application may be sent back to the learned company Judge for denovo consideration, hearing and decision in accordance with law.

4. After having heard the learned Counsel for both sides, in our opinion, the following order would meet the ends of justice.

O R D E R

(i) Order dated 10th August, 2006 passed in Company Application No.10 of 2006 is set aside.

(ii) Company Application No.10 of 2006 is remanded

back to the learned Company Judge for consideration and hearing, on its own merits, in accordance with law.

(iii) It is directed that unless otherwise directed by the learned company Judge, the lessee shall continue to pay the lease money to the Official Liquidator.

(iv) Appeal disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)